

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings

**§ 38-431. Definitions**

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in § 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in § 38-431.03 and the auditor general as provided in § 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.

3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

4. "Meeting" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.

5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.

6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

### **§ 38-431.01. Meetings shall be open to the public**

**A.** All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

**B.** All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

**C.** Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to § 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.

**D.** The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

**E.** A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its internet website, if applicable, either:

(a) A statement describing the legal actions taken by the public body of the city or town during the meeting.

(b) Any recording of the meeting.

2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its internet website, if applicable, except as otherwise specifically provided by this article.

3. Within ten working days after a subcommittee or advisory committee meeting, post on its internet website, if applicable, either:

(a) A statement describing legal action, if any.

(b) A recording of the meeting.

**F.** All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

**G.** The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.

**H.** A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

**I.** A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

## **§ 38-431.02. Notice of meetings**

**A.** Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.

2. The public bodies of the counties, school districts and other special districts shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable

and practicable as to all meetings.

3. The public bodies of the cities and towns shall file a statement with the city clerk or mayor's office stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.

4. The public bodies of the cities and towns that have an internet web site shall post all public notices of their meetings on their internet web site and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a city or town web site or that temporarily or permanently prevents the usage of all or part of the web site does not preclude the holding of the meeting for which the notice was posted if all other public notice requirements required by this section are complied with.

**B.** If an executive session will be held, the notice shall be given to the members of the public body, and to the general public, stating the specific provision of law authorizing the executive session.

**C.** Except as provided in subsections D and E, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public.

**D.** In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I.

**E.** A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A, and if, prior to recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

**F.** A public body that intends to meet for a specified calendar period, on a regular day, date or event during such calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period. Such notice shall specify the period for which notice is applicable.

**G.** Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours prior to the meeting, except in the case of an actual emergency under subsection D.

**H.** Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

**I.** Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. Such agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee, or compromise the attorney-client privilege.

**J.** Notwithstanding subsections H and I, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, where the matter was not listed on the agenda provided that a statement setting forth the reasons necessitating such discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately prior to the executive session.

**K.** Notwithstanding subsection H, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that:

1. The summary is listed on the agenda.
2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

### **§ 38-431.03. Executive sessions**

**A.** Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

**B.** Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general on a request made in connection with an audit authorized as provided by law.

4. A county attorney or the attorney general when investigating alleged violations of this article.

**C.** The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

**D.** Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

**E.** Except as provided in § 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.

**F.** Disclosure of executive session information pursuant to this section or § 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or § 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

#### **§ 38-431.04. Writ of mandamus**

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

#### **§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification**

**A.** All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

**B.** A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.
4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

### **§ 38-431.06. Investigations; written investigative demands**

**A.** On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

**B.** In addition to other powers conferred by this article, in order To carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.
2. Administer an oath or affirmation to any person for testimony.
3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
4. Examine by means of inspecting, studying or copying any account, book, computer, document, minutes, paper, recording or record.
5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

**C.** The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.
4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

**D.** If a person objects to or otherwise fails to comply with the written investigation



demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.
2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.
3. Granting other relief the court deems proper.

#### **§ 38-431.07. Violations; enforcement; removal from office; in camera review**

**A.** Any person affected by an alleged violation of this article, the attorney general or the county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

**B.** A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to

incurring any such obligation or indebtedness.

**C.** In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

### **§ 38-431.08. Exceptions; limitation**

**A.** This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to § 41-619.55.

**B.** A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.
3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.
4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

**C.** The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation

of this section shall be those remedies available in § 38-431.07, as against the director only.

**D.** Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, § 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

### **§ 38-431.09. Declaration of public policy**

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe any provision of this article in favor of open and public meetings.

Current through End of the Forty-Eighth Legislature, First Regular Session (2007)

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